McBRIDE BAKER & COLES

Clifton A. Lake
715.5765

A Partnership Including Professional Corporations

Northwestern Atrium Center
500 West Madison Street, 40th Floor
Chicago, Illinois 60606

312 715.5700 FAX 993.9350

Lloyd M. McBride
1934-1983

Edward H. Baker, Jr.
1935-1970

April 30, 1990

FEDERAL EXPRESS

Ms. Sandra R. Moreno
Assistant Regional Counsel
USEPA, Region VIII
999 18th Street - Suite 500
Denver, CO 80202-2405

Re: *East Helena, Montana - CERCLA Site*

Dear Ms. Moreno:

On behalf of my client, American Chemet Corporation, and in response to USEPA's demand for reimbursement of response costs dated February 28, 1990, I am submitting this offer for a *de minimis* settlement pursuant to Section 122(g)(1)(A) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA").

American Chemet proposes to settle its alleged liability for the response costs identified in the USEPA's February 28, 1990, letter by payment of the sum of 1,995 dollars and execution of a mutually agreeable Consent Decree which includes contribution protection. American Chemet believes that a *de minimis* settlement is appropriate for the following reasons:

1. The amount of hazardous substances contributed by the operations of American Chemet at the site is minimal in comparison to the total amount of hazardous substances present.

There are, as the Agency is aware, only four PRPs which have been identified in connection with this site. ASARCO has operated a primary lead smelter at the site since 1888. These operations continue to the present. Operation of the smelter has resulted in the release of lead and other heavy metals, arsenic and sulfur to the environment. Anaconda operated a symbiotic "zinc fuming" operation at the smelter site until 1972, when ASARCO acquired and began to operate the zinc fuming operation. Zinc fume is a material recovered from primary lead smelter slag by oxidation of elemental zinc present in the slag after vaporization at high temperatures. The average consistency of zinc oxide fume recovered from primary lead smelter slag is 88 percent ZnO and 12 percent $PbSO_4$.

American Chemet's operations which involved smelter slag-recovered zinc fume began in 1947, and continued until early 1984. American Chemet's facility is located adjacent to the smelter site. During 1947-1949, American Chemet simply packaged in bags zinc fume which it purchased in railcar lots from Anaconda. After 1949, a kiln was added to improving drying of the fume and to burn off small amounts of carbon that had carried through from the fuming process. ASARCO purchased the Anaconda zinc fume operation in 1972, and at that point became American Chemet's supplier of zinc fume. ASARCO continued to operate the zinc fume process until the fall of 1982. Following cessation of zinc fume production by ASARCO, American Chemet purchased zinc fume from Minera Mexico, between April 1983 and early 1984. The last shipment of zinc fume was packed by American Chemet in East Helena in March of 1984. With the exception of zinc fume, which as noted above, contained approximately 12 percent $PbSO_4$ by weight (or 8 percent by weight Pb) no other materials handled by American Chemet at its East Helena facility contained significant quantities of lead. In November of 1984, American Chemet converted its zinc fume processing plant to utilize a lead-free zinc oxide which it markets under the tradename "Zinox". The material has a maximum lead concentration of .08 percent. Other products produced at the East Helena plant include zinc dross, talc and copper oxides. The lead content of zinc dross does not exceed .1 percent. Talc was milled by American Chemet between August of 1954 and April of 1966. Talc chemically is magnesium silicate ($3MgO \cdot 4SiO_2 \cdot H_2O$). The talc processed at East Helena by American Chemet contained no more than .1 percent lead. Copper oxide production at the plant began in 1964, and continued to the present. The process consists of roasting and oxidation of copper "chops", copper scales and copper muds. The feedstocks for the copper oxide production contain lead on the average at less than .1 percent.

Beginning in 1949, American Chemet utilized a fabric filter collection device to remove entrained zinc fume from its kiln emissions prior to exhaust to the atmosphere. In early 1974 a much larger baghouse collection device was installed at the packing station in order to improve kiln operation and dust collection.

American Chemet's zinc fume packaging operation handled material that contained on the average 8 percent Pb by weight. No other materials utilized or processed at American Chemet contained any significant concentrations of heavy metals (including lead) or arsenic.The zinc fume packaging operation was always controlled by a fabric filter collection device to remove entrained particulate matter from the process ventilation equipment prior to exhaust to the atmosphere.

The material handled by American Chemet was the same chemically as that emitted from the zinc fuming operation. The point of exhaust to the atmosphere of American Chemet's zinc fume packaging operations was 25 feet above ground surface. The volumetric flow rate of this discharge was on average only 10,000 cubic feet per minute. Prior to 1972 the Anaconda zinc fuming process stacks emitted at a height of 100 feet above ground surface and at a volumetric flow rate of 135,000 cubic feet per minute. After ASARCO acquired the zinc fuming operation from Anaconda in 1972, the stack height was increased to 400 feet. Particulate emissions from the fuming plant therefore were dispersed over a much greater surface area than particulate emissions from American Chemet's zinc fume packaging operation exhaust.

2. The hazardous substances which may have been contributed by American Chemet's operations are not significantly more toxic nor of greater hazardous effect than other hazardous substances present at the facility.

In comparison to the principal source of heavy metal and arsenic contamination, both on and off the site, *i.e.*, the operation of the primary lead smelter for more than one hundred years, American Chemet's zinc fume packaging process emissions contained far lower concentrations of

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lead and little, if any other heavy metals or arsenic. The lead-bearing ores processed at the smelter contained approximately 30 percent lead by weight. Further, ASARCO's emissions of heavy metals and other substances from the primary lead smelting process were, and continue to be, emitted at elevations of more than 400 feet above ground level, and at much higher volumetric flow rates than was the case with American Chemet's zinc fume emissions, thereby dispersing particulate matter containing greater concentrations of heavy metals over a much larger area of the off-site surface than could possibly have been impacted by American Chemet.

3. A *de minimis* settlement with American Chemet is "practicable and in the public interest" within the meaning of §122(g)(1) of SARA.

American Chemet understands that ASARCO and Anaconda have agreed to undertake remedial action at the site, and will shortly execute a Consent Decree to implement that agreement. As major economic entities, ASARCO and Anaconda clearly have the financial capability of doing so, without regard to the participation of American Chemet, a far smaller company whose financial resources are, by comparison, extremely limited. For example, American Chemet's 1989 after tax profit was only 1.4 million dollars. American Chemet's participation in the remedial process is both unnecessary and inequitable given its limited resources and extremely small contribution to the contamination present.

American Chemet's offer is premised on its calculation of a potential maximum volumetric share of the surface contamination caused by aerial deposition of lead-containing particulate matter of .08 percent. Given the nature of its operations, American Chemet contends that it could have contributed to only a very small portion of the off-site lead contamination of surface water and soils. Further, American Chemet clearly did not contribute to process-related contamination on site (*i.e.*, contamination associated with the process ponds and fluids; ground water; the slag pile and the ore storage areas) as those "operable units" are defined in Mr. Duprey's February 28, 1990, letter. This putative volumetric share is based upon the following facts.

In 1988, ASARCO reported on its SARA Form R reports to USEPA, atmospheric emissions from process and fugitive sources at the East Helena smelter of lead, cadmium and arsenic in the collective amount of 145,800 pounds. If such emissions are representative of heavy metal and arsenic emissions from the smelter in prior years (under the circumstances, a most conservative assumption) lead, cadmium and arsenic emissions to the atmosphere from the smelter operation since it began in 1888, are 14,850,000 pounds. The zinc fuming process operated at the smelter site during 1927 through 1982, a period of 55 years. In May of 1980, ASARCO performed a stack test on the zinc fuming process stack which reported lead emissions of 8.98 kilograms per day, or 6,900 pounds of lead per year. Using this emission rate , the zinc fuming process resulted in atmospheric lead emissions of 379,500 pounds during the 55 year period in which it operates. American Chemet operated a zinc fume packaging operation at a site adjacent to the smelter during the years 1947 through 1983. During that period, its records of zinc fume shipments received and zinc fume shipped show a difference of 15,907 pounds. For present purposes, American Chemet assumes that all such losses were to the atmosphere. American Chemet lacks shipping records for the period 1947 through 1949. To account for these years, American Chemet has arbitrarily added 100,000 pounds to the amount of zinc fume presumed lost to the atmosphere from its zinc fume packaging operations. Using these figures, American Chemet's calculated atmospheric emissions of lead during the period 1947 through 1983 are 9,273 pounds. During the period 1984 through 1989, American Chemet estimates that lead emissions from all sources at its East Helena plant were 500 pounds per year. Total lead emissions to the atmosphere from American Chemet's operations during the period 1947 through 1989 were therefore 11,773 pounds. Those emissions represent .08 percent of all atmospheric lead, cadmium and arsenic emissions from the smelter and related operations since 1888. Applying this factor to USEPA's demand for reimbursement of response costs in the amount of 2,533,902 dollars yields a volumetric share attributable to American Chemet of 1,995 dollars.

You have advised us that USEPA's response costs cannot be allocated in any manner to work done by USEPA with respect to contamination on the smelter site from smelter operations (*e.g.*, the process ponds and fluids) and contamination off the smelter site which resulted from transport of atmospheric emissions. As a consequence, this *de minimis* settlement offer does not attempt to distinguish between on-site and off-site response costs. Instead, American Chemet's calculated volumetric share is applied to all of the government's response costs. Notwithstanding, it is American Chemet's position that its true equitable share of responsibility for surface contamination is far less than represented by the calculated .08 percent share. In making this offer, American Chemet expressly reserves the right to contend that, when and if it is alleged that American Chemet bears some responsibility for the costs of remediation of lead contamination in the East Helena area, response costs associated with removal or remediation of contamination on the smelter site are not properly attributable in any respect to American Chemet. American Chemet will also contend that only a very small area of the off-site surface could possibly have been impacted by lead emissions from American Chemet's operations, and that consequently its fair share of off-site remediation costs are far less than .08 percent.

Please contact me when you have reviewed this offer and are prepared to discuss it.

Very truly yours,

Clifton A. Lake

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